

Kolman, Joe

From: MAXINE KORMAN [kormanmax@hotmail.com]
Sent: Saturday, September 11, 2010 4:08 PM
To: Kolman, Joe; Maurier, Joe; Jeff Pattison; kormanmax@hotmail.com
Subject: comments to eqc Sept 14,2010 re fwp "streamside land management"

EQC meeting in Helena on September 14th at 11:30am. Chairman Chas Vincent will be discussing new private property land takings by FWP for proposed stream setbacks under a near web-based program called "Crucial Areas Planning System" (CAPS).

The Madison County Planning Board listened to a presentation by FWP staffer Doris Fisher at their August 30th meeting. Several comments by Ms. Fisher should concern every property owner in Montana. It seems the FWP will now engage in land use planning. Here are a few of Ms. Fisher's comments at this meeting.

- Buffers and setbacks for water bodies (130 to 300 feet)
- Buffers and setbacks along with density requirements for native grasslands and shrubs.
- "the smaller the setback range, the greater the human encroachment."
- "it would be ideal for people to consult with FWP before they made a land purchase."
- create "living with Wildlife" covenants for projects.
- "The goal is to decrease habitat fragmentation and increase habitat connectivity and habitat corridors across state lines."
- "entire counties in Montana have been identified as **Areas of Concern.**"

Ron Korman and Maxine Korman are serving notice to this committee and this agency of the state of Montana, that we have recorded DECLARATION OF ACCEPTANCE OF LAND PATENTS for those patented land parcels that we own. This Declaration is recorded in the Valley County Clerk and Recorder. Some land patents conveyed land that included Larb Creek within the legal description on the face of the land patent. The case entry files from the National Archives do not show any record of the state appearing and objecting prior to the land patent issuance.

A reading on the issue of "Sovereignty" in WATER RIGHTS LAWS IN THE NINETEEN WESTERN STATES by Wells A. Hutchins and published by the United States Department of Agriculture, 1977 states that non-navigable streams were not conveyed to the states but remained in the public domain. At the time that water rights vested and the easements that were obviously intended to go with a water right (see Montana Supreme Court case Smith v. Denniff) vested as well and the United States issued the land patent. We suggest studying Miranda v. Arizona where rights secured under the federal Constitution may not be abridged by a state. We also point out another US supreme court case Summa Corp. v. California where the United States Supreme Court invalidated an action by the state of California because it would be a third party collateral attack against the land patent . There are other cases on this issue as well. If the state acts to retroactively impair our vested rights, we will have a damage and standing. We recommend the state not proceed. Ron and Maxine Korman Hinsdale, Montana